

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

In re WESTERN REFINING, INC.
STOCKHOLDER LITIGATION

Lead Case No. 3:17-cv-00002

This Document Relates To:

ALL ACTIONS

JOINT STIPULATED MOTION AND ORDER TO DISMISS ACTION AS MOOT

WHEREAS, Western Refining, Inc. (“Western Refining” or the “Company”) entered into an agreement and plan of merger with Tesoro Corporation (“Tesoro”) on November 16, 2016 (the “Merger Agreement”), pursuant to which Tesoro agreed to acquire Western Refining in a stock-for-stock transaction that gives Western Refining stockholders the right to receive 0.4350 of a share of Tesoro common stock for each share of the Company’s common stock or, alternatively, the right to elect to receive \$37.30 for each share of the Company’s common stock (with such cash consideration capped at 10% of the total equity consideration) (the “Proposed Transaction”);

WHEREAS, on December 14, 2016, the Company filed a preliminary Registration Statement on Form S-4 (“preliminary Registration Statement”) with the Securities and Exchange Commission (the “SEC”) in support of the Proposed Transaction;

WHEREAS, Srinivasan, Brian Miller, Gene Love, Joseph Shomberg and John Solak (“Plaintiffs”) filed complaints challenging the Western Refining - Tesoro transaction. Mr. Vasani’s complaint was first filed in Case No. 3:17-cv-00002 (Jan. 4, 2017). Plaintiffs in all five suits filed a stipulation to consolidate the cases into this one on January 6, 2017. *See* Stipulation and Order to Consolidate and Appoint Interim Lead Counsel for Plaintiffs (Jan. 26, 2017), ECF No. 4 (the “Stipulation”). In the Stipulation, the complaint in the Miller Action (Case No. 3:17-cv-00002) was deemed the operative complaint (“the Complaint”). Stipulation

at ¶ C. 2. The complaints are all based on Western Refining's preliminary proxy statement, the Registration Statement, which is a joint proxy/prospectus with Tesoro filed with the SEC on Form S-4 on December 14, 2016;

WHEREAS, after the preliminary Registration Statement was filed, Western Refining and Tesoro filed three amendments to the preliminary Registration Statement (the "Amended Registration Statements");

WHEREAS, on February 23, 2017, Defendants filed a motion to dismiss the Complaint;

WHEREAS, Plaintiffs believe and contend that the Amended Registration Statements contained material information and disclosed additional material facts that mooted certain meritorious claims set forth in the Complaint;

WHEREAS, Defendants deny that any claim asserted in the Complaint is meritorious, deny that the Amended Registration Statements contained any additional material facts, and deny that any information disclosed in the Amended Registration Statements resulted from or was intended to address any of Plaintiffs' claims;

WHEREAS, Plaintiffs believe that as a result of the additional information disclosed in the Amended Registration Statements the Plaintiffs' actions have caused and provided a compensable benefit to Western Refining's stockholders;

WHEREAS, Defendants assert that Western Refining's amendments to the preliminary Registration Statement were in response to comments from the SEC and that Plaintiffs' actions have not caused or provided any benefit to Western Refining's stockholders;

WHEREAS, counsel for Plaintiffs seek to dismiss the above-captioned action with prejudice as to Plaintiffs only, and without prejudice as to all unnamed members of the putative class, and Plaintiffs seek to submit a motion for an award of attorneys' fees and reimbursement of expenses (the "Fee and Expense Motion") in connection with the Amended Registration Statements;

WHEREAS, no compensation in any form has passed directly or indirectly to the Plaintiffs or their attorneys and no promise or agreement to give any such compensation has been made;

WHEREAS, Defendants reserve the right to oppose any potential Fee and Expense Motion;

WHEREAS, the parties currently intend to meet and confer concerning Plaintiffs' potential Fee and Expense Motion, and if the parties are unable to reach an agreement concerning such motion, the parties intend to ask the Court to set a stipulated briefing schedule; and

WHEREAS, no class has been certified in the above-captioned actions.

NOW, THEREFORE, subject to approval and entry of an order by the Court, the parties stipulate as follows:

1. The above-captioned action is dismissed, and the claims asserted therein are dismissed with prejudice as to the named Plaintiffs and without prejudice as to all other members of the putative class.

2. This Court retains continuing jurisdiction over the parties in the Action solely for purposes of further proceedings related to the adjudication of Plaintiffs' anticipated Fee and Expense Application.

3. Because no class has been certified, the dismissal as to the putative class is without prejudice, no compensation in any form has passed directly or indirectly to the Plaintiffs or their attorneys, and no promise to give any such compensation has been made, dismissal without notice to the putative class members will not prejudice putative class members, and, therefore, pursuant to Rule 23(c)(2) of the Federal Rules of Civil Procedure, notice to the putative class members of this dismissal is not required.

4. This stipulation is without prejudice to any position, claim, or defense any party may assert with respect to the potential Fee and Expense Motion or any matter related thereto.

DATED: March 6, 2017.

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SO ORDERED the _____ day of _____, 2017.

UNITED STATES DISTRICT JUDGE